IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 318 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KATHI NATHUBHAI BHOIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR RJ OZA for Petitioners No. 1-5

MR LR PUJARI APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/12/2001

ORAL JUDGEMENT

Heard the learned advocates.

This Revision Application under Sec. 397 read

with 401 CrPC arises from the judgment and order dated 21st September, 1992 passed by the learned Addl. Sessions Judge, Bhavnagar in Criminal Appeal No. 60 of 1983.

In Sessions Case No. 111 of 1982 lodged before the learned Assistant Sessions Judge, Bhavnagar, the petitioners and two others were accused of committing offence punishable under Secs. 147, 149, 307, 323 and 324 IPC. All the seven accused persons were tried by the learned trial Judge and under the judgment and order dated 22nd August, 1983, the learned trial Judge was pleased to convict the petitioners-the accused nos. 1 to 5 for the offence punishable under Sec. 148 IPC and Sections 323 & 324 read with Section 149 IPC and under Section 307 read with Sec. 149 IPC. The accused nos. 6 & 7 were acquitted. The accused nos. 1 & 2 are the brothers, the accused no. 3 is the son of the accused no. 1 and the accused nos. 4 & 5 are the sons of the accused no. 2. The accused nos. 1 to 5; the petitioners, were sentenced to rigorous imprisonment for three months for offence punishable under Section 148 and 323 IPC. They were sentenced to rigorous imprisonment for six months for offence punishable under Section 324 IPC and a fine of Rs. 100/=. In default of payment of fine, a further rigorous imprisonment for fifteen days. For offence punishable under Sec. 307 read with Section 149, the said accused were sentenced to rigorous imprisonment for five years and a fine of Rs. 500/= each. From the aforesaid sum of fine imposed upon the accused, a sum of Rs. 1000/= was ordered to be paid to witness Gordhan Harkha and a sum of Rs. 500/= was ordered to be paid to witness Jadav Keshav by way of compensation. Feeling aggrieved, the accused nos. 1 to 5, the petitioners, preferred Criminal Appeal No. 60 of 1983 before the learned Addl. Sessions Judge, Bhavnagar. The appeal was dismissed on 21st September, 1992. Feeling aggrieved, the petitioners have preferred the present Revision Application.

The incident in question occurred on 30th June, 1982 at around 9 o'clock in the morning at village Samadhiala, District-Bhavnagar. The complaint [Exh. 38] was lodged by witness Jadav Keshav. According to the complainant, while he and his uncle - witness Gordhan Harkha were sitting at the shop of one Makod Dayal, the accused no. 1 Nathubhai Bhojbhai Kathi, armed with an axe and other accused armed with sticks, dhariya, spear, etc. came along with two unknown accused persons [accused nos. 6 & 7], gave a stick blow on the head of the complainant, followed by the other accused. The

witness Gordhan Harkha tried to intervene, therefore, he was also assaulted. The accused hit him on the head, hands and legs with axe, dhariya and sticks. However, others intervened and carried home the injured witnesses. The prosecution examined the injured witness Jadav Keshav [Exh. 17]; Gordhan Harkha [Exh. 25]; Motibhai Devajibhai [Exh. 26]; Dr. Vasantkumari Narayan Bahera [Exh. 28]; Ghanshyam Dharamshi [Exh. 31]; Makad Dayal [Exh. 32]; panch witness Ganesh Savaji [Exh. 33]; Bhupatsingh Naranji [Exh. 36]; panch witness Makansi Ramsingh Debahi [Exh. 37]; Investigating Officer Ramsuratsingh Mahavirsingh [Exh. 39] and Dr. Hasumatiben Ranchhodlal Patel [Exh. 41]. The accused were arrested alongwith their respective weapons on 4th July, 1983 under Panchnama Exh. 23. The Panchnama of the place of incident is produced at Exh. 22. The report of the Forensic Science Laboratory is produced at Exh. 20. Dr. Vasantkumari Narayan Bahera, Medical Officer, Botad [Exh. 28] has proved the medical certificates Exhs. 29 & 30. She has opined that witness Jadav Keshav had suffered five injuries including a lacerated wound on the right frontal region on the head; that the said injuries were caused by hard and blunt weapon. She has opined that the witness Gordhan Harkha had suffered as many as ten injuries, including an incised wound on parieto occipital region and the fracture of the skull bone, Laceration of brain, incised wounds on left hand index & middle fingers and the thumb. The incised wounds were caused by sharp instrument, while other wounds were caused by hard and blunt instruments.

Dr. Hasumatiben Ranchhodlal Patel [Exh. 41] has proved the medical certificates given to the injured witnesses Jadav Keshav and Gordhan Harkha at the Civil Hospital, Ahmedabad. The presence of the petitioners accused nos. 1 to 5 has been proved by the injured eye-witnesses Jadav Keshav and Gordhan Harkha.

On perusal of the above evidence, both the courts below have recorded concurrent findings. The motive for assault has been established inasmuch as that there was a long standing animosity between the two families i.e. the family of the accused and the family of the injured witnesses. In a complaint lodged by the witness Jadav Keshav, the accused no. 4 was arrested and was released on bail, the previous day. The injured and the accused were the residents of the same village and were known to one another. The incident occurred in the broad day light at around 9 O'clock in the morning. The identity and the presence of the accused nos. 1 to 5 have been held to be proved. Keeping in view the number of blows

given to the witnesses, the incised wounds on the body of the witness Gordhan Harkha, the fracture of the skull bone, the incised wound on the head of the said witness which was deep enough to lacerate the brain also, and the injuries caused to the witness Jadav Keshav, both the Courts held that the assault was made with an intention to kill. Hence, the offence punishable under Section 307 read with Sec. 149 has been held to have been proved and also the offence punishable under Secs. 323 and 324 read with Secs. 148 & 149 have been held to be proved. In view of the nature and gravity of the offence, the trial Court has imposed punishment as recorded hereinabove, which has been confirmed by the lower Appellate Court.

I have carefully perused the evidence on record. I am of the view that both the Courts have rightly recorded the finding of guilt against the accused nos. 1 to 5; the present petitioners. Considering the gravity of the offence, the sentence imposed upon the accused is also required to be confirmed. I, therefore, do not find a case for interference with the conviction recorded by the courts below or the sentence imposed upon each of the accused nos. 1 to 5.

The revision application is dismissed. Rule is discharged. Bail Bonds are cancelled.

[Ms. R.M Doshit, J.]

Prakash*